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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,574	03/17/2004	Luiz B. Da Silva	BL-4 NPROV	5969

7590  
John P. Wooldridge  
252 Kaipii Pl.  
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07/26/2005

EXAMINER
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SMITH, RUTH S

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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10/803,574

EXAMINER
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ART UNIT	PAPER
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20050722

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

See attachment.

Ruth S. Smith  
Primary Examiner  
Art Unit: 3737

Newly submitted claims 1-24 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 1-24, directed to a probe and original claim 1, directed to a diagnostic system for determining tissue type and state are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it does not require the key/key-opening. The subcombination has separate utility such as a non-medical probe for industrial applications.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on May 5, 2005 presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention for the reasons set forth above.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S. Smith whose telephone number is 571-272-4745. The examiner can normally be reached on M-F 7:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ruth S. Smith  
Primary Examiner  
Art Unit 3737

RSS